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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/552,618	08/25/2006	Berndt Cramer	10191/4522	6299
26646 7590 01/18/2011 KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004				
EXAMINER				
DINH, BACH T				
ART UNIT		PAPER NUMBER		
1724				
MAIL DATE		DELIVERY MODE		
01/18/2011		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/552,618	Applicant(s) CRAMER ET AL.
Examiner BACH T. DINH	Art Unit 1795

—The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

THE REPLY FILED 27 December 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: none.
Claim(s) objected to: none.
Claim(s) rejected: 11-13, 15-23, 25-29, 32, 35 and 37-41.
Claim(s) withdrawn from consideration: none.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: please see continuation sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Nam X Nguyen/
Supervisory Patent Examiner, Art Unit 1753

The amendment filed on 12/27/2010 will not be entered because the amended claim now requires the constant current source is "configured to be set to at least two values of the pump current and for alternating operation including ON phases and OFF phases, with the during of the ON phases and OFF phases being specified" is new issue not previously considered because the previous claim only requires one configuration for the constant current source.

With respect to Applicant's amendment, the argument is not persuasive because it is drawn to the amendment that introduced new issue not previously considered.

However, even if Applicant's arguments are given full consideration, the arguments are not persuasive for the following reasons.

Firstly, the interpretation of the word predefine is consistent with its ordinary meaning; furthermore, the originally filed specification does not provide a specific definition for the word "predefine". Therefore, Applicant's assertion that the interpretation given in the Office Action as unreasonably broad is not supported. Furthermore, Applicant's assertion "If a person must operate a device (as in Metrich) in order to determine a quantity (the number of ON phases and OFF phases) then it is unreasonably to consider that quantity to be predefined with respect to the device" is not related to the disclosure of Metrich nor is it related to the content of the Office Action for Metrich does not want to measure the quantity that is related to the number of ON phases and OFF phases.

Secondly, Examiner did not equate "a variable cyclic ratio" to the number of ON phases or OFF phases; it is the variable cyclic ratio that sets the number, which also includes the number one, of ON phases or OFF phases of the applied current. Additionally, the application of current, in ON or OFF phases, is controlled by the variable cyclic ratio, which is controlled by the measurement signal delivered by the measurement cell; therefore, the ON or OFF phases of the applied current is determined before the application of current due to the measurement signal.

Thirdly, Applicant asserted that the measurement signal is obtained continuously; the assertion is correct; however, it is unrelated to the content of the Office Action because the measurement signal cited in the Office Action is pertained to the measurement signal generated by the measurement cell (3:9-12), which is not the same as the average value of current at each instant.

Thus, Examiner maintains the position that current claim is anticipated by Metrich.